Decision 02-04-058 April 22, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Verizon California Inc. (U 1002 C) for Exemption from the Requirements of Article 5 (§§ 816-830) of the Pub. Util. Code Requiring Commission Approval for Utility Issuance of Stocks, Bonds or Notes.	Application 01-04-023 (Filed April 18, 2001)

OPINION PARTIALLY GRANTING VERIZON CALIFORNIA INC.'S APPLICATION FOR EXEMPTION FROM SECTIONS 816-830 OF THE PUBLIC UTILITIES CODE

I. Summary

This decision partially grants Verizon California Inc.'s (Verizon) application for exemption from the Commission's Competitive Bidding Rule and the requirements of Article 5 (§§ 816-830) of the Public Utilities Code. We grant Verizon's request for exemption from the Commission's Competitive Bidding Rule for certain financing transactions, because an exemption would provide Verizon with the flexibility to meet its financing requirements on the most favorable terms available. We also permit Verizon to file the General Order (GO) 24-B reports, which list the amount and purpose of debt, quarterly instead of monthly, in accordance with relaxed requirements authorized for certain energy utilities. All relief granted is prospective.

We deny Verizon's request for exemption from §§ 816-830, because Verizon has not demonstrated that relieving it from filing those applications is in the public interest. Under the Commission's New Regulatory Framework (NRF),

we retained our responsibility and authority over Verizon's stock and security transactions and review of those transactions applications is one component of the NRF monitoring program. Verizon must continue to comply with §§ 816-830 at this time.

II. Background

In Decision (D.) 89-10-031, the Commission adopted a NRF for Verizon (formerly GTE California Incorporated) and Pacific Bell (Pacific) and concluded that it retained its responsibility and authority over stock and security transactions, consistent with §§ 816-830. In order to ensure the successful implementation of NRF, the Commission established monitoring goals and implemented a monitoring program. One goal is financial and rate stability, and the Commission concluded that it would monitor Verizon's applications filed under §§ 816-830 as one tool to achieve that goal. Another NRF goal is avoidance of cross-subsidies and anti-competitive behavior to prevent Incumbent Local Exchange Carriers (ILECs) from subsidizing competitive services with less competitive services.

In Rulemaking (R.) 01-09-001 and Investigation (I.) 01-09-002, the Commission will assess and revise Verizon's and Pacific's NRF. In Phase III, the Commission will consider revisions to the NRF monitoring reports. Parties will be able to propose new monitoring reports and the elimination of existing monitoring reports. In Phase I of the NRF reassessment, the Commission will consider the Verizon audit, which included an analysis of Verizon's monitoring reports.

In this application, Verizon requests exemption from Commission approval of its issuance of financial instruments, including stocks, bonds, and notes, under §§ 816-830. Verizon further seeks exemption from the requirements of § 851 whenever such transfer or encumbrance serves to secure debt. Finally, Verizon requests that the Commission no longer apply its Competitive Bidding Rule to Verizon. In support of the Application, Verizon includes the Declaration of Robert G. Deter, Manager-Financial Analysis for Verizon's Treasury Department and Assistant Treasurer of Verizon California. Deter describes various circumstances under which Verizon seeks financing to demonstrate his claim that Commission preapproval has disadvantaged Verizon. The timeframes involved in taking advantage of favorable opportunities are too short—often only days—to seek Commission approval, which typically takes several months. As a result, Verizon has had to forgo structured financing, below-market financing opportunities offered by brokers, immediate refinancing of debt, retail sales of securities, and selling securities in both the domestic and overseas markets on an opportunistic basis at below-market rates. Verizon cannot request pre-approved authority to issue long-term debt securities from the Commission that would anticipate all types of financing opportunities. In addition, Verizon is hampered in requesting such pre-approval by the Competitive Bidding Rule, which negates private placements, by the detail required under Rule 33 of the Commission's Rules of Practice and Procedure, and by the Commission fees required under Pub. Util. Code § 1904(b).

Verizon's application was noticed in the Daily Calendar on April 20, 2001. There were no protests.

III. Discussion

We partially grant Verizon's application and streamline our financing approval requirements for Verizon. Verizon states those approval requirements often cause financing related costs to increase, and the delay in awaiting approval increases Verizon's opportunity costs. The competitive bidding requirement also can increase costs. Verizon claims that Commission approval can take two to six months; the applications are rarely protested and often are resolved on an ex parte basis. We do not find that there is unreasonable delay in approving Verizon's financing applications. Prior Commission approvals of Verizon's financing requests reflect a difference of seven weeks to three months between the filing of an application and a decision.[1] The last two approvals, in 1997 and 1998, took seven and nine weeks, respectively. Although we do not find unreasonable delay, we find that we can streamline our approval process.

We grant Verizon's request for exemption from the Commission's Competitive Bidding Rule for certain financing transactions, because we routinely grant specific exemptions when utilities represent that granting exemptions will enable the utility to issue debt on advantageous terms. (*See* D.01-02-011 (San Diego Gas & Electric Company); D.01-01-021 (Southern California Edison Company); and D.00-12-064 (Pacific Gas and Electric Company).) In D.98-11-025, the Commission authorized $600 million in new debt issues for Verizon and granted an exemption from the Competitive Bidding Rule for debt issues with principal amounts in excess of $200 million to provide Verizon with the flexibility to meet its financing requirements on the most favorable terms available.

We specifically grant Verizon exemption from our Competitive Bidding Rule for debt issues with principal amounts greater than $200 million, and for variable rate debt securities and negotiated financing transactions, in conjunction with future approvals under §§ 816-830.

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[1] D.84-02-007 (Application (A.) 83-11-55); D.88-12-071 (A.88-10-006); D.94-03-032 (A.93-12-004); D.96-03-014 (A.95-12-80); D.97-10-053 (A.97-09-003); and D.98-11-025 (A.98-09-002).

Debt issues must comply with the Competitive Bidding Rule. Verizon asserts the Commission's Competitive Bidding Rule, adopted in 1946 and last modified in Resolution (Res.) F-616 in 1986, fails to reflect the complexity or the reality of modern financing circumstances. Res. F-616 provides that the Competitive Bidding Rule is mandatory for all domestic debt issues of debentures and first mortgage bonds of $200 million or less. Res. F-616 permits certain exemptions from the Competitive Bidding Rule, including debt issues in excess of $200 million principal upon a compelling showing made by a utility that, because of the size of an issue, such exemption is warranted and including debt issues for which competitive bidding is not viable or available. Exhibit A of Res. F-616 states:

> Securities privately placed with specific lenders and bank term loans obviously must be negotiated. Competitive bidding is not presently available in European or Japanese markets. Certain tax-exempt pollution control bonds have terms that are specifically negotiated. Variable interest rate debt is normally completed on a negotiated basis. It is reasonable that these types of debt instruments should be exempt from the Competitive Bidding Rule.

Verizon's request for exemption from the Competitive Bidding Rule is within the scope of exemptions permitted under Res. F-616. Verizon has demonstrated that our Competitive Bidding Rule places Verizon at a disadvantage in financing transactions. Relieving Verizon from adhering to our Competitive Bidding Rule for certain transactions should provide Verizon with the flexibility to meet its financing requirements on the most favorable terms.

We permit Verizon to report on a quarterly basis the information required by GO 24-B; 1) the amount of debt issued by the utility during the previous month; 2) the total amount of debt outstanding at the end of the prior month; 3) the purposes for which the utility expended the proceeds realized from issuance of debt during the prior month; and 4) a monthly statement of the separate bank account that the utility is required to maintain for all receipts and disbursements of money obtained from the issuance of debt. Although GO 24-B requires monthly reporting, we routinely have permitted energy utilities to report quarterly. (*See* D.01-02-011.) Quarterly reporting should lower Verizon's administrative costs while continuing to inform the Commission of Verizon's issuance of debt and the purposes for which the proceeds are expended.

We deny Verizon's request for exemption from the requirements of §§ 816-830, because Verizon's application and attached declaration are insufficient to establish that the Commission should grant the exemption.[2] Verizon fails to establish that such an exemption is in the public interest. The application requests §§ 816-830 exemption for one NRF ILEC, Verizon.[3] The Commission generally has exempted classes of carriers, not individual carriers, from §§ 816-830 review. Where we have exempted individual carriers, because such review is not necessary in the public interest under § 829, we have based the exemption on the fact that California revenues in relationship to total utility operating revenues were small. Another factor we have considered is whether the utility's regulated operations were subject to review by other Commissions. (*See* D.00-06-064, *Application of Avista Corporation for an Order Exempting Its*

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[2] We cannot relieve Verizon of the § 1904(b) fee requirements as long as we approve financing applications under §§ 816-830.

[3] Pub. Util. Code §§ 816 through 830 establish a regulatory scheme for prior Commission approval of public utility issuance of stock and stock certificates, or other evidence of interest or ownership, or bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months and for the purposes of the issuance of such securities. These provisions authorize hearings and provide penalties.

Securities Issuance Transactions from Commission Authorization.) Verizon has not made that kind of factual showing in this application and instead has relied on inconsistency with NRF as support for its requested exemption.

Verizon notes that all telecommunications companies, except ILECs, have exemptions from the requirements of §§ 816-830. Verizon states that the required competitive analysis for an exemption is not necessary to this request; exemption is justified because the approval requirement is out of step with the successful manner in which NRF companies are regulated. Verizon asserts that the requirement for Commission approval of financing is inconsistent with the regulatory mechanism under which Verizon is regulated. Verizon also claims this requirement hinders it from operating with the flexibility necessary to compete in the rapidly evolving telecommunications market place. We previously concluded that we retained our responsibility and authority under §§ 816-830 and that these applications were one means of monitoring financial and rate stability under NRF. In this application, Verizon does not address the impact of relinquishing our authority under §§ 816-830 and the role of §§ 816-830 applications in NRF monitoring.

Our financing approval process provides the Commission with information still needed under NRF but is also designed to be flexible. Utilities generally forecast external funds requirements for such purposes as construction expenditures and maturities and redemptions of long-term debt and can request approval based on those forecasts. Where immediate relief is required the utility's request need not be as specific. For example a financing application could state:

> The precise amount and timing of each type of debt obligation; the market in and the method by which it will issue; and the terms and provisions, price and interest rate (which may be fixed, adjustable,

> variable or set by auction, remarketing, or other rate setting procedures) will be determined by the utility, with due regard for its financial condition and requirements then prevailing and anticipated market conditions, including competing demands for funds, existing at the time of sale.

The application could further state:

> The debt securities may be issued directly as debentures, notes, bonds, loans, or other evidences of indebtedness which may include, without limitation, commercial paper programs, extendible commercial notes, bank loans, private placement with insurance companies or other lenders, bankers' acceptances, or other variable rate or fixed rate borrowing instruments which are or may become available in the capital markets.

Policies that permit utilities the means to secure broad financing authority in the shortest possible processing times and streamlining our approval process should keep administrative costs low and permit Verizon to take advantage of favorable financing opportunities.

Because we deny Verizon's request for exemption from §§ 816-830, we decline to exempt Verizon from the requirements of § 851 whenever such transfer or encumbrance serves to secure debt and to relax Rule 33's specific requirements for §§ 816-830 applications. We conclude that it is sufficient at this time to streamline our approval process, as discussed above. If Verizon further seeks exemption on policy grounds, it should consider filing a petition to adopt, amend, or repeal a regulation under § 1708.5, rather than an application, to enable the Commission to determine whether it should review exemption for all NRF ILECs. The § 1708.5 petition process initiates that broader review, rather than a piecemeal approach, and conserves Commission resources.

In Resolution ALJ 176-3062, dated May 3, 2001, the Commission preliminarily categorized this application as ratesetting and preliminarily determined that hearings were necessary. Because we partially grant this unopposed application and deny the remainder of the application, we find that hearings are not necessary.

IV. Conclusion

We partially grant this application, as discussed above, and deny the request for an exemption from §§ 816-830.

V. Comments on Draft Decision

The draft decision of ALJ Grau was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Verizon filed comments on February 25, 2002 and suggested that the Commission consider additional means to streamline financing transaction preapprovals. Verizon's proposal to use the advice letter process is not consistent with the requirements of § 818.

Findings of Fact

1. Verizon requests exemption from Pub. Util. Code §§ 816-830.

2. Verizon requests exemption from the Commission's Competitive Bidding Rule.

3. In D.89-10-031, the Commission concluded it retained its responsibility and authority over stock and security transactions consistent with §§ 816-830, established the NRF goal of financial and rate stability, and concluded that it would monitor applications filed under §§ 816-830 as one tool to achieve that goal.

4. The Commission has exempted utilities from the Competitive Bidding Rule for certain financial transactions.

5. The Commission has permitted certain energy utilities to submit the reports required by GO 24-B quarterly rather than monthly.

Conclusions of Law

1. The request for exemption from the Commission's Competitive Bidding Rule is reasonable and should be granted for the financial transactions identified in the body of this decision.

2. The request for Pub. Util. Code §§ 816-830 exemption should be denied as not in the public interest, since the Commission's responsibility for and authority over stock and security transactions is an integral part of NRF.

O R D E R

IT IS ORDERED that:

1. This application for exemption from Pub. Util. Code §§ 816-830 is denied.

2. Verizon California Inc. (Verizon) is exempted from the Competitive Bidding Rules for §§ 816-830 debt issues with principal amounts greater than $200 million and for variable rate debt securities and negotiated financing transactions.

3. Verizon is permitted to submit the reports required by General Order 24-B quarterly.

4. This proceeding is closed.

This order is effective today.

Dated April 22, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN

MICHAEL R. PEEVEY
Commissioners